

Remarks at American Bar Association

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Thank you very much Ed.* I appreciate your referring to my visit as a rare treat and not a rare trick or treat. Well, I'm very pleased to have a chance to come here and share some thoughts with you. It is gratifying to see public sector lawyers interested in improving their management effectiveness.

In private practice I used to attend a number of programs on economics of the bar and there was really one central underlying theme at these programs—how to make more money or how to net more money. Today, you're here to discuss ways to provide more effective service to the government and to the people; it's an impressive purpose.

I don't know how well we're doing as lawyers—somebody gave me a pin the other day that said "Lawyers eat their young." It's always in the eye of the beholder.

I'd like to take a moment to share a story that is going around in the Soviet Union now that *perestroika* is taking effect. The President is collecting these stories, so we pass them to him if we think they are reliable. One of them concerns a representative that Gorbachev sent out into one of the Ukrainian states to see how *perestroika* was getting along. He went to one of the small villages and asked to see the mayor. After talking to the mayor for a moment he said, "Do you have any television sets in this village?" The mayor looked at him and said, "Of course we have television sets. There is a television set in every hut in this village. In fact, there may be two television sets in many of these huts." The representative said, "That is very interesting. What about refrigerators?" And he said, "Of course. We all have refrigerators." The representative looked him in the eye and said, "Do you know who I am?" And the mayor said, "Of course I do. Who else but a CIA agent would come into a village with no electricity and ask questions like that?"

I have to confess to you that the last time I directly managed a group of lawyers was in 1960, 28 years ago, as United States Attorney for the Eastern District of Missouri. I am very conscious of that as I approach the subject of my talk, so I am going to steer clear of modern management techniques. I'd like to talk to you this morning primarily about how I view some things and share a few experiences with you as a "user" of public sector legal services—on the bench, at the FBI, and at the CIA.

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A word about lawyers and modern intelligence. The day before yesterday I had the privilege of dedicating a statue in our Headquarters foyer of General William F. Donovan, Wild Bill Donovan, who headed the Office of Strategic Services during World War II. I couldn't help thinking that this man had left a lucrative law practice—somewhere between \$800,000 to \$1 million a year in current dollars—to work as a dollar-a-year-man throughout the war setting up the OSS.

In the 41 years of the Central Intelligence Agency's history, only four out of the 14 Directors of Central Intelligence have been lawyers: Allen Dulles, Bill Colby, Bill Casey, and myself. But we account for 18 of the 41 years, for better or for worse. I have always thought of myself, and taken a good deal of comfort in my own position, as a private citizen on loan to his country.

I took that theme from my personal role model, John J. McCloy, who rendered such conspicuous service during World War I and World War II. He served as Assistant Secretary of War during World War II and then as High Commissioner for Germany, coming in and out of government as required. Both Donovan and McCloy were active in very prestigious firms. The firms let them go, and they let them come back again.

I believe that when you are appointed to a position in government—as opposed to being a member of civil service—survival is a matter of conditioning yourself to leave. You do your best work when you're prepared to leave tomorrow, and I remind myself of that every day when I head out to work. This doesn't mean you want to go, but you're prepared to go. It means you will not compromise anything that is important in terms of your ethics or responsibilities, nor will you support any policy that you believe is unconscionable. I think you do better work under those circumstances and I've been grateful to Mr. McCloy, who is now in his nineties, for having passed that concept on to me. And this concept went a little further. Mr. McCloy said that there are really three kinds of people in public office: those who are elected and serve for terms; those who are career employees; and those like myself, who are on loan. I think it is fair to say that those of us on loan act as bridges. We bring private sector points of view to government and that builds on the expertise and the experience of the career employees of the executive branch of government. We need all three, and I think today we do a pretty good job with all three.

Although I still think of myself as on loan to the government, it has become a long loan. It has been about 18 years now, and I have had the rare privilege of seeing the law and engaging in the law in most of its dimensions. I have found it to be like Shakespeare's definition of Cleopatra: "Age cannot wither her, not custom stale her infinite variety." And every assignment that I have had has increased my appreciation for this country, for its citizens, and for its system of justice which guards and protects us all.

My first loan was voluntary, but just a few steps ahead of the draft in World War II, and I stayed in the reserves and was recalled in the Korean War. I mention this because in being recalled to duty I went from \$200 a month to \$225 a month, a slight increase in my compensation, so you could hardly call it a sacrifice. I went to see Dean Prosser, the great dean of authority on torts as you recall at the University of California, on my way out to the Pacific to ask him how I could best keep up with my legal experiences and keep up with what was going on. I was tremendously afraid I was losing out with my peers by going off to fight that war. He assured me that the law didn't change that fast and we talked about it at length and finally settled on something that I thought was very useful. I took *U.S. Law Week*, *CCH Labor Law*, and *CCH Taxes* with me—areas that were most likely to have things happen to them while I was overseas. And I studied them religiously on shipboard. I found when I got home that while I was learning, a good many of my peers were hauling collection papers up to the magistrate's court. I was every bit in front of the problem with them. It worked for me.

The first assignment that I had as a public sector lawyer was on my own ship. One night the captain rounded me up—we were still in Pearl Harbor—and he said that four members of our crew had been arrested on the beach by naval investigators. He asked if I would go represent them. So I went down to the brig where they were being held and I had to pound on a lot of doors. This was post-Escobedo and pre-Miranda and just about a month or two before the Uniform Code of Military Justice came into effect. And I finally persuaded the investigators that I had a right to see them, to see my new clients. When I got in there I said, "Have you told these men that they don't have to answer any questions?" And one investigator said, "Well, we've told them that they have certain constitutional rights." And I said, "Well did you tell them that those rights included the right not to answer any questions?"

Shortly after I was able to represent them I went off to Korea, and was anchored out in Japan when I got a series of letters. The captain laid a letter sent to him on my desk and said, "You write the answer and I'll sign it." It had gone from admiral to admiral to admiral, from the Commandant of the shipyard to the Commandant of the Fourteenth Naval District to the Commander Service Force Pacific Fleet and it said: "Due to Lt. Webster's interference we were unable to obtain a confession." So you can imagine the kinds of letters that I wrote, and tore up for not being sufficiently respectful. I finally did make my point, the captain signed it, and in an agonizing period for me because mail back and forth took so long, back came a letter through all the channels from the Commander Service Force Pacific Fleet that simply said, "Lt. Webster had done no more than assure to those men the rights guaranteed by the Constitution of the United States." And I was relieved by the conclusion of the letter, which said, "No further action." I still have that letter.

The captain then tried to keep my status as a lawyer from being widely known, but from time to time they'd be stuck as we were on the island of Guam, and I found that there was a lot of sluggishness in developing independence for lawyers carrying out their responsibilities in court martials. The general attitude was "I wonder what the commanding officer wants us to do in this situation." And I'm sure that there have been permutations of that in your own work, about what the boss wants you to opine in a given situation.

In fact I was in Sasebo Harbor the day the Uniform Commercial Code came into existence, and the admiral was so exercised he wouldn't even use the radio; he sent signal flags up summoning the commanding officers and the executive officers over. For the first time in naval history, a captain's mast was reviewable by somebody else and they were all saying, "Well, damn, I'll never have another captain's mast." And they did and it's working fine and we got through it. But there was that kind of resistance.

I had a friend who came through Pearl Harbor when I had returned there. He said he'd been appointed to represent a defendant on his ship in a court martial. He was sure that he had been appointed because he knew nothing about court martials and asked if I could help him. I did help him but under the kinds of resistance that made me feel we had a long way to go. The authorities said they didn't know whether my friend could have anybody off the ship as a co-counsel. We went through that process to establish he could have anybody he wanted. Then they said, "Well, we don't know when we are going to this, we're going to have the court martial at sea when we're doing exercises this week." And I said "Fine, my ship's in dry dock, when do we leave?" We ended up trying that case at midnight one night and I was able—because I had prepared for the case and I don't think the others had—to help my friend's clients. They were acquitted—they had to be—all the evidence had been thrown out. The problem was that my friend didn't thank me because he got 70 requests to represent him from onboard ship immediately after that.

Well those are the kind of reminiscences that came to mind as we were talking and I thought I might share them with you.

One of the things that I think is important for all of us in the government sector to keep in mind is how much the public looks to us in terms of trust and responsibility. The public observes how we conduct our business, and this affects their view of government and the way it operates. You may recall that Arthur Vanderbilt, the great justice from New Jersey and founder of the Institute of Judicial Administration, spent the last part of his life trying to improve the traffic courts of this country because in his view, and I think he's right, that's where the rubber hits the road for most people in their exposure to our judicial system and he

wanted them to come away with a good feeling about it. I was reminded of that when I was sworn in as Director of the FBI, when President Carter said that he could think of no agency in government that had more to do with how American people felt about their government than the FBI. When it did well, people felt good about the government and by implication when it went astray, it undercut the public's sense of justice.

And so during my nine years there I tried to underscore at every possible level the importance of understanding a simple, single mission there—to uphold the law. And I guess I ended 75 percent of my speeches with the commitment that I made at the time I was sworn in; that we would do the work that the American people expected of us in the way that the Constitution demanded of us. That involved more lawyers. We only had about 1,000 lawyers. At the time people used to say to me, "Is it true that the FBI employs only lawyers and accountants?" And I would say, "No, it's no longer true. I'm not sure it ever was true." And they said, "Well, why isn't it true?" I brought the number back from 1,000 to about 1,400 over the length of time we were hiring people, and we weren't employing very many. We strengthened the amount of legal training that all our Special Agents got at Quantico, starting with the Constitution; required another 16 hours of legal review in every field office in the country; had a principal legal adviser, an agent who was a lawyer in every one of the 59 field offices; and a very strong and good General Counsel's Office in Washington. In addition to that, I carried with me the concept of the elbow law clerk that I enjoyed for eight years on the bench. I had two special assistants who applied for those positions much as one would apply for positions as a law clerk, and they served an average of two years and then rotated out. I have been delighted to see the quality of experience that they've had since that time, both in the private sector and in the public sector. A number of them have gone to the best firms in Washington and other parts of the country; some are now partners and are continuing to reflect credit on their experience and on me. Three of my special assistants have become assistant U.S. attorneys, and three have published books. They are probably the best kind of representatives that the FBI could possibly ask for.

Going back to my experience on the bench for a moment, I found that government lawyers on the whole were dedicated, well prepared, and really understood the law applicable to their cases. I also found that they were fair in their approach and this is important to this public concept of justice.

In the rotunda outside the Attorney General's office, carved in the wood is a statement which I attribute to Frederick Lehmann, a former Solicitor General who happened to come from my home city of St. Louis. It says: "The United States wins its case whenever justice is done one of its citizens in the courts." And I have found uniform quality, in terms of that approach, in criminal law. The end goal in presenting a case forcefully and effectively is that justice may be served, rather

than just obtaining a conviction. I think that has also been true in the civil litigation that I had occasion to judge where government agencies were represented in court.

When I moved from the FBI to the CIA, I took many of those concepts with me. Like the FBI, CIA was under attack as a result of the Iran-Contra affair. When I came to the FBI it had been under attack because of the break-ins that had taken place in the early 1970s. The safest way, the best way, really the only way to deal with that is to renew our pledge of adherence to fidelity to law and fidelity to the Constitution.

I'd like to regress again if I may to the FBI, where we used those lawyers that I described to make sure that our most sensitive cases were done according to law. Not just the Foreign Intelligence Surveillance Act cases, not just the Title III's, but the undercover cases that were just beginning to find dimension and utility. We were beginning, through guidelines, to define the parameters of what was appropriate in those cases.

You may recall the ABSCAM cases, among the first to hit the front pages because they involved congressmen. We were under tremendous attack because of those cases. But every one of those cases was affirmed on appeal for the following reasons: because we had used the Department of Justice; because we had used U.S. attorneys in working out the scenarios; and because we had in many cases placed U.S. attorneys in closed circuit television situations where they could watch the crime unfold. The attorneys could make a call to the undercover agent, telling him to step back or go forward and guide him in what he was doing. Every one of those cases was affirmed on appeal. Fourteen times they tried at the Supreme Court—turned back every time. And I attribute that to the fact that we kept our lawyers close to us, and I try to do that at the Central Intelligence Agency. We have a fine group over there and they have many, many responsibilities. They deal with the sensitive cases, the sensitive surveillance issues to be sure that they're handled in accordance with the law.

Our lawyers have a wide range of responsibilities worldwide—real estate, personnel, contract work, memoranda of understanding, all the disciplines. I'm moving the Office of General Counsel back to our Headquarters in Langley because I think we need our lawyers closer to our clients. We're putting them right next to the Inspector General's Office so that there can be interplay between the Office of Inspector General and the Office of General Counsel. We've just recently settled a case and I think it's a tribute to the quality work of our Office of General Counsel. I'm referring to the Orlikow case, which involved psychiatric treatment by a Canadian psychiatrist whose work was supported in part by a grant from a foundation established by the CIA. This case was settled with a reasonable concern for liability, a reasonable concern for the victims, a reasonable recognition

of the difficulties of trial, and a reasonable amount to be paid by the government. I think that those negotiations were conducted with great skill and in cooperation with the Department of Justice. We had about one or two days of publicity instead of two or three months of aggravation that could only have adversely affected the Agency. So, I think it was in the best interest of all concerned and justice was certainly done to innocent victims who knew nothing about what was taking place.

We work with many other General Counsel's offices. To mention just a few, the National Security Agency, the State Department, the Army, the National Security Council, the Intelligence Oversight Board, and the President's personal counsel. This brings home to me that in this government of laws you and I are providing the glue that holds our system together.

If I had any words of advice for you, it would be simply this—that the private sector pays for advice, corporations and individuals pay for advice and because they are paying for it they listen to it. You want to be sure that your government hears you and that is a responsibility that you must accept even if the client is not all that anxious to do so. I'd urge you to be what Harry Truman called a "one-armed lawyer" if you can. You know that story: "On one hand this is the case, but on the other hand . . ." In government, we need to hear both sides, but we need to know what you conclude and how you get there. It's important that you understand the concerns of your clients, but don't try to trade places with them. There are important differences between lawyer and client. Help them to find a way through their problem if you can. Give them a solid basis on which to act or not to act.

I have talked at length about serving in the public sector. But the greatest blessing of my professional life has been the privilege of working in harness with men and women of integrity—first in the Navy, then the bar, on the bench, in the FBI, and now at the CIA. Throughout my career, I have worked with people who are not preoccupied by fame or fortune, but who see public service as a way to pursue their highest aspirations for a better world.

As I was preparing these remarks, I thought of a photograph and quotation that appeared on the cover of the *St. Louis Bar Journal* when I was its editor in the early 1950s. It showed a young lawyer—perhaps a law student—sitting in a courtroom, behind the judge's bench, looking off into the future. And the quotation, which I selected from Judge Learned Hand, said, "Descended to us, in some part molded by our hands, passed on to succeeding generations with reverence and pride, we at once its servants and its masters, renew our fealty to the law." Those are wonderful words, and they are still deeply meaningful to me. And perhaps that is why I was so grateful when you invited me to be with you today.